

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

CSX TRANSPORTATION, INC.,

Plaintiff,

V.

NORFOLK SOUTHERN RAILWAY
COMPANY, *et al.*,

Defendants.

Case No. 2:18-cv-530

MEMORANDUM IN SUPPORT OF DEFENDANT NORFOLK SOUTHERN RAILWAY COMPANY'S MOTION TO FILE DOCUMENTS UNDER SEAL

Defendant Norfolk Southern Railway Company (“NS”), by counsel, states as follows in support of its Motion to File Documents Under Seal. Defendant seeks to file the following document under seal: Defendant’s unredacted Reply in Support of its Motion to Exclude Opinions of Professor Howard P. Marvel. On October 29, 2019, the Court entered a Stipulated Protective Order, which governs the parties’ use of confidential information produced in this case. ECF No. 79.

1. Paragraph 2 of the Stipulated Protective Order defines “Protected Material” as material containing information that “must or may be protected from disclosure,” including material designated “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” ECF No. 79, ¶ 2.

2. Defendant's unredacted Reply in Support of its Motion to Exclude Opinions of Professor Howard P. Marvel refers or cites to documents, or contain testimony, that have or has been designated "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or "CONFIDENTIAL –

ATTORNEYS' EYES ONLY" by Plaintiff CSX Transportation, Inc. ("CSX") under the Stipulated Protective Order.

3. These documents and the testimony designated as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" contain highly confidential and sensitive information relating to CSX's, NS's, and NPBL's transportation and shipping practices, business strategy, internal communications, and other highly confidential, proprietary, and sensitive business information, release of which would harm CSX, NS or NPBL.

4. These documents and the designated deposition testimony are "Protected Material" under the Stipulated Protective Order. ECF No. 79, ¶ 2.

5. The Stipulated Protective Order requires Defendant to file these documents and the designated deposition testimony under seal. ECF No. 79, ¶ 16.

For the foregoing reasons, Defendant requests that the Court enter the proposed order attached to the Motion to Seal as Exhibit A authorizing and directing Defendant to file the unredacted Reply in Support of its Motion to Exclude Opinions of Professor Howard P. Marvel under seal, and directing the Clerk of Court to maintain such documents under seal pending further order of the Court.

Defendant also files herewith a Notice of Sealing Motion as required by Local Rule 5(C). Defendant waives oral argument on this Motion.

[Signatures on following page]

Dated: November 14, 2022

Respectfully submitted,

/s/ Alan Wingfield

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